86-229

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROBERT L. BROOKS, PETITIONER

vs

EBONY OIL CORPORATION, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Second Circuit

Robert L. Brooks,
Petitioner, Pro se
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43pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether the Court of Appeals affirming the District Court's Judgment constitutes an unconstitutional (under the Due Process Clause) or an unlawful or an unwise improper denial of justice, or discrimination toward a Pro se, who is not an attorney, particularly when issues presented by Appellant's Appeal, are issues of a type which clearly would be reviewed and determined by the Court of Appeals on the merits in a comparable case, presented by an attorney.

2. Whether Plaintiff, Pro se gave sufficient facts of an evidentiary nature to show a meritorious action and complied with the requirements of Title 28, U.S.C. Section 1343, as stated in the complaint, gives rise to a cause of action for damages under the Fifth Amendment.

3. Whether, having accepted the case, with federal jurisdiction, under Title 28, U.S.C. Section 1331 and Section 1343 as alleged in the complaint, and by a Standard Referred Crder assign the case to a Magistrate for 16B scheduling; on a later Motion, denied plaintiff's Motion for a Default Judgment; did the courts below apply the proper standard of proof on a later motion for summary judgment to find that federal jurisdiction was lacking.

4. Whether any provision of the Constitution of the United States permits a judge to decline to hear a lawful made motion, pursuant to Rule 59(e) of the Federal Rules of Civil Proceedure, with an affidavit in Support of the Motion, giving additional facts that, under the law, the court does have federal jurisdiction

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

No. _____

ROBERT L. BROOKS, Petitioner

vs

EBONY OIL CORPORATION, Respondent

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
for the Second Circuit

Petitioner, Robert L. Brooks, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on the 20th day of May, 1986, affirming the judgment of the District Court in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, infra, 1a-2a) is not reported. The opinion of the District Court (App. B, infra, 3a) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 20, 1986. This Court has jurisdiction under, 28 U.S.C., Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution, provides in relevant part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * *

2. Federal Question, reenacted by Pub. L 96-486, Section 2(a), Stat. 2369. codified at 28 U.S.C. (1980) ed., Section 1331, provided:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

3. Pub. L. 96-170, Section 2, 93 Stat. 1284, as amended December 29, 1979, Civil rights and elective franchise, codified at 28 U.S.C., Section 1343(a) provided:

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42:
>
> (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United

> States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

4. Article 1, Section 10, Clause 1, protecting a contract, provided:

> " No State shall . . . .pass any bill or attainder, ex post facto law, or law impairing the obligation of contracts . . . "

5. The Consumer Credit Protection Act, Title 15, U.S.C., Section 1671 et seq., Section 1691e, Civil Liability; Section 1691e(a), Individual or class action for actual damages, provided in part:

> (a) Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

Section 1692e(2)(A), False or mislead-

ing representations, provided:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. . . . is a violation of this section:
>
> (2) The false representation of —
>
> (A) the character, amount, or legal status of any debt;

6. Pub. L. 94-381, Section 5, 90 Stat. 1120, Intervention by United States on Constitutional Question, codified at 28 U.S.C. (1976 ed) Section 2403(a), provides in part:

> (a) In any action, suit or proceeding in a court of the United States in which the United States or any agency, officer or employee thereof is not a party, wherein the Constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence. . . .and for argument on the question of Constitutionality . . . . for a proper presentation of the facts and law relating to the question of Constitutionality.

STATEMENT

This case originated in the United States District Court for the Eastern District of New York, on August 15, 1985, in an action that arises under the Constitution of the United States, in Article 1, Section 10, Clause 1. The entire case is derived from the violation of a written contract, and the violation has been sustained and nurtured under the color of State law. Federal Jurisdiction was invoked under Title 28, U.S.C., Section 1331 and Section 1343, upon the filing of the complaint (App. C. infra, 4a-12a) by Petitioner, appearing Pro se, against Ebony Oil Corporation, respondent.

The Petitioner, who is not an attorney, was unsuccessful in getting the courts to take Judicial notice of adjudicative facts, before coming to Federal Court and

the Honorable Thomas C. Platt, U.S.C.J., on a Standard Referral Order, referred the case to Magistrate A. Simon Chrein on August 27, 1985, for pretrial supervision and preparation of a scheduling order as required by Rule 16(b) of the Federal Rules of Civil Procedure.

Ebony Oil Corporation's Answer to the Complaint, personally served on September 6, 1985, with Notice stated in the Summons, that judgment by default would be taken if the Complaint was not answered within 20 days after service of the Summons; was not timely served; was rejected and returned by Certified Mail, Returned Receipt Requested, on October 5, 1985.

A Motion for a default judgment, pursuant to F.R.C.P. Rule 55(b)(2), was filed in District Court on November 4, 1985, returnable, November 15, 1985. Judge Platt,

who heard the motion, later denied the motion; referring the parties to the Magistrate, to set up 16(b) schedule.

Plaintiff's Notice of Motion, with an Affidavit in Support, to be heard on December 6, 1985. Homorable John C. Platt, who heard the Motion, found that federal jurisdiction was lacking and dismissed Plaintiff's Complaint. Counsel for Ebony Oil Corporation was advised to submit a judgment.

Plaintiff's Notice of Motion, with an Affidavit in Support with Exhibit "A", pursuant to Federal Rules of Evidence, Rule 201, Judicial Notice of Adjudicative Facts, and pursuant to Rule 59(e) of Federal Rules of Civil Procedure, Motion to alter or amend judgment, returnable December 27, 1985 so that District Court may amend its finding of the motion heard on December 6, 1985. The case was not called. The par-

ties were notified by telephone, not to attend the hearing, as Judge Platt would not hear the motion. In Court on December 27, 1985, a clerk from the Judge Platt's office, restated that the case would not be called as the Judge had made his decision.

The first Judgement Order submitted by the counsel for Ebony Oil Corporation, Dated: December 16, 1985, was not signed by Judge Platt as not in proper form. The Judgment Order (App.B, infra, 3a) was signed and dated: January 6, 1986.

The Court of Appeals for the Second sented on Appeal, but affirmed the judgment sented on Appeal, affirmed the judgment of the District Court(App. A, infra, 1a-2a).

REASONS FOR GRANTING THE PETITION

REASON # 1, THE LAW

Article three, Section 2, Clause 1, makes provision for cases said to present a general federal question, by providing:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

Interpreting this language, Chief Justice Marshall, in Osborn v Bank of the United States (1824) 22 US (9 Wheat) 738, 6 LE 204, early gave Article three, Section 2, Clause 1, a broad jurisdiction for federal courts.

As provided by Title 28, U.S.C., Section 1331, federal jurisdiction extends to all civil actions, and states:

> The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

The Complaint, filed in District Court, Eastern District of New York, Docket

CV 85 3044, on August 15, 1985, stated in #3 paragraph that:

> "The jurisdiction of this Court is invoked under and is conferred by U.S.C U.S.C., Title 28, Section 1331 and Section 1343, in an action that arises under the Constitution of the United States, Article 1, Section 10, Clause 1."

Article 1, Section 10, Clause 1, provided:

> " No State shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts . . . "

Quoting paragraph # 6 of the Contract reads as follows:

> " 6. That the aforesaid contract stated, in part: ' . . . The Seller and Purchaser agree to the following conditions; . . . 1, All the above equipment is to be installed in a first-class workmanlike manner . . ' ".

Quoting in part paragraph #7 of the Contract, reads as follows:

> " 7. . . the Defendant. . . was

notified by the sub-contractor, of the poor workmanship and the violation in the installation of the Oil Burning Equipment."

Quoting in part paragraph # 8 of the Contract, reads as follows:

"8. . . . Defendant's workman . . . ? refused to correct the poor installation job."

Quoting paragraph #9, of the Contract, reads as follows:

"9. That the conduct and acts of the Defendant herein were willful, malicious, wanton and all calculated to impede, delay and prevent the Plaintiff from obtaining due process as promised in the signed contract, Exhibit "A"."

As stated in paragraph # 10, Ebony was cited by the Department of Building for the City of New York, on Docket No. 4111/76, on the installation, also demanded that a licensed Oil Burner Installed be used to correct the job.

With the backing of the State Courts, as the evidence of the case and reliance on both State and Federal law submitted by the Petitioner, was not considered, the obligation of a signed contract was breached, by the Defendant, inter alia, as alleged in the Complaint in paragraphs number 21, 22, and 23 as follows:

> " 21. That upon information and belief, Defendant did wilful and milicious serve a summons, that was barred by the laws of the State of New York, under the "color of law", as defined by United States Act of 1871, 42 U.S.C., 1983."
>
> " 22. That the Defendant's summons, to be answered in State Supreme Court, was not pursuant to any law or statute, and only used to harass this Plaintiff."
>
> 23. By reason of Defendant's fraudulent conduct, under the "color of law", as set forth above, the Plaintiff has sustained damages in the sum of FIFTY THOUSAND DOLLARS ($50,000.00)."

REASON # 2, JUSTICE

The obligation of the contract, protected by Article 1, Section 10, Clause 1, and was breached, under color of State law, condoned by the State courts, by allowing Ebony Oil Corporation, within the past six years, to legalize a "bogus order" submitted to the Clerk of Special Term, Part 1, Queens County Courthouse, New York, with the name of the court, the name of the judge, and the date the order was signed, all blocked-out. The "bogus order" was created over-lapping two copies of a former, black-out where the orders are joined, and take a copy of the center of the two sheets.

The date of the letter by attorney Lawrence R. Bailey, Sr., attorney for Ebony Oil Corporation, sent to the Clerk of Special Term, Part I, was July 24, 1980. An Inquest was held on March 26, 1981, the Official Court Reporter, Barry S. Weis-

ner, CSR, in a Certified, true and accurate transcript of the Inquest, listed the name of only Lawrence R. Bailey, ESQ. The Judgment for Inquest stated: " . . . and the Court having taken testimony of the Plaintiff LAWRENCE J. CORMIER, as President, . . ."

New York's CPLR Rule 5015 provides for Relief from judgment or order, CPLR Rule 5015(a)(3) fraud, misrepresentation, or other misconduct of an adverse party, were relied on in both an Order to Show Cause, and the Memorandum of Law, submitted to the court, on or about March 24, 1982, after motions to Queens County, Supreme Court had been denied by Honorable Sidney Leviss, with a Fifty dollars cost against this petitioner for Ebony Oil Corporation, without taking Judicial Notice of Adjudicative evidence and facts submitted under both State and Federal law.

Appellant's Appendix, that had been submitted to the Supreme Court of the State of New York, Appellate Division, Second Department, Sworn to before a Notary Public on August 10, 1984 as, comprising copies of the originals on file in Queens County Supreme Court, was submitted as Exhibit "A" on December 16, 1985 to the Affidavit in Support of the Motion, so that District Court may amend its finding of the motion heard on December 6, 1985; returnable on December 27, 1985, and was submitted, pursuant to Federal Rule of Civil Procedure, Rule 59(e), and pursuant to Federal Rules of Evidence, Rule 201(d). The timely made motion was neither considered, or heard, in violation of constitutional rights, by the court.

In the Notice of Motion for leave to Appeal to Court of Appeals, for the State of New York, question of law and of general

importance, (a) Who will protect the rights, under the law, if a defendant, Pro se, can not rely on the laws of the State, and the protection of The United States Code of 1983, 42 U.S.C. 1983?; (b) Should the courts refuse to take judicial notice of fraud to the Court and to the defendant, when evidence is submitted, and no objection has been made?; (c) Should a judgment, entered in a City Court of the City of New York, be circumvented by the Supreme Court for the State of New York, without due process, under the "color of law"?.

Motion No. 577 in State of New York, Court of Appeals was decided on July 5, 1985, and it was ORDERED, that the said motion be and the same hereby is dismissed upon the ground that (1) no appeal lies from the order of the A ppellate Division insofar as it dismissed an appeal from the

February 21, 1984 default judgment (CPLR 5511); and (2) the remaining portions of the order of the Appellate Division do not finally determine the action within the meaning of the Constitution . . . "

Ebony Oil Corporation served subpoena duces tecum and an Income Execution by a Sheriff for the State of New York, who is collecting 10 % of Petitioner weekly salary, of which to date, almost seventeen hundred ($1700.00) dollars have been deducted.

Consumer Credit Protection Act, with its many umbrellas of protection, that Congress acted principally to protect the rights from unrestricted garnishment of wages. see, Long Island Trust Co. v U.S. Postal Service, C.A.N.Y. 1981, 647 F. 2d 336; and, Sub-section 1692e of Title 15, U.S.C., False or misleading representations, umbrella of protection, under the

provisions of (2) The false representation of — (A) the character, amount, or legal status of any debt;. All is meaningless, if the District Court can create new laws, just for Pro ses, to circumvent Constitutional allegational of the complaint, by simply stating, "no federal jurisdiction", dismiss the complaint, and refuse, in violating Rule 3 of Rules for United States District Court for the Southern District for motions, also in violation of Rule 7 of Rules of Civil Procedure for the United States District Court.

The United States Court of Appeal for the Second Circuit, Calendar No. 1271, Court of Appeals Docket No. 86-7110, for Hearing on Friday, May 16, 1986, must have read Petitioner's Reply Brief, before it was ordered, adjudged, and decreed

four days later, May 20, 1986, that the District Court judgment is affirmed. If the Court of Appeals part of page 2, Point 1, "The Plaintiff-Appellant was denied due judicial proceedings, under the law." Paragraph 1 and part of paragraph read:

"An action arising under the Constitution, and laws of the United States; and to redress the deprivation, under color of any State laws, statute, of any right, privilege or imunity secured by the Constitution of the United States or by any Act of Congress providing for equal right; is, in all aspects a purely statuory action, over which the courts should judge fairly and justly.

"The principal purpose of the Grant of original Federal Question Jurisdiction is to afford plaintiff a sympathic and knowledgeable forum for the vindication of

their Federal Rights, see Hunter v United Van Line (CA Cal. 1984) 746 F 2d 635 . . ."

Article I, section 10, clause 1 of the Constitution prohibits the states from adopting laws, "impairing the obligation of contracts", Article I, section 10, clause 1 of the Constitution prohibits the courts from creating laws, "impairing the obligation of contracts". By refusing to hear a lawful motion, the obligation of the eight Amendments to the United States Constitution, known as "The Bill of Rights," in force since December 15, 1791.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted

Robert L. Brooks,
Petitioner, Pro se

July 31, 1986

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROBERT L. BROOKS, PETITIONER

vs

EBONY OIL CORPORATION, RESPONDENT

PETITIONER'S APPENDIX

To the United States Court of Appeals
for the Second Circuit

APPENDIX A (1a-2a)

UNITED STATES COURT OF APPEALS 1a
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of May, one thousand nine hundred and eight-six.

Present:

HONORABLE IRVING R. KAUFMAN,

HONORABLE RICHARD J. CARDAMONE,

HONORABLE RALPH K. WINTER,

Circuit Judges.

----------x

ROBERT L. BROOKS,

Plaintiff-Appellant.

-against- 86-7110

EBONY OIL CORPORATICN,

Defendant-Appellee.

----------x

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

1. Brooks, pro se, contends the district court erred in dismissing his complaint for lack of federal jurisdiction, Brooks, however, alleged only a breach of contract claim that has already been litigated in the New York state courts, and wholly failed to state a colorable cause of action pursuant to 28 U.S.C. Section 1331 or Section 1343. Judge Platt, therefore, properly dismissed the complaint.

2. Accordingly, the judgment of the district court is affirmed.

/s/
IRVING R. KAUFMAN,

/s/
RICHARD J. CARDAMONE,

/s/
RALPH K. WINTER.
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported cited, or otherwise used in unrelated cases before this court or any other court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x INDEX NO.
CV 85-3044
ROBERT L. BROOKS, (PLATT)
Plaintiff.

-against-

JUDGMENT

EBONY OIL CORPORATION,
Defendant.

----------x

The plaintiff having made a motion for an order striking out the defendant's answer and directing the entry of summary judgment, the defendant having opposed said motion and the motion having come on to be heard before the HON. THOMAS C. PLATT for argument on December 6, 1985.

IT IS ORDERED AND ADJUDGED, that the plaintiff's complaint be and the same is hereby dismissed for lack of federal jurisdiction.

Dated: New York, New York
January 6, 1986

SO ORDERED

/s/

PLATT, j.

UNITED STATES CONSTITUTION, ARTICLE I, SECTION 10, CLAUSES 1

Section 10. (10 No State shall enter into any treaty, alliance, or confederation; grant letters of marque and repri= sal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

APPENDIX G

RULES OF CIVIL PROCEDURE, RULE 59(e)

Ruel 59. New Trials; Amendment of Judgments

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend the judgment, shall be served not later than 10 days after entry of the judgment.

AMENDMENTS TO THE UNITED STATES CONSTITUTION

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

TITLE 28, U.S.C., SECTION 2403:

§ 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971; Aug. 12, 1976, Pub. L. 94-381, § 5, 90 Stat. 1120.)